

Mr. Speaker, I thank Representatives COMER and KHANNA for their work on this bipartisan bill, and I thank Senators PORTMAN and PETERS for their work on last year's Senate companion.

This measure would correct a provision of the Consolidated Appropriations Act for fiscal year 2021 that was incorrectly inserted into the law.

The language of this bill had been carefully crafted by the House Oversight and Reform Committee and the Senate Committee on Homeland Security and Governmental Affairs over many months prior to the agreement to include it in last year's Consolidated Appropriations Act. The bill you see before you today honors that agreement and resolves the drafting error.

The bill would prohibit the use of reverse auctions for the procurement of complex, specialized, or substantial design and construction services procured by the Federal Government.

Such services would include site planning, architectural and engineering services, interior design, construction or substantial alteration of public buildings or public works, and substantial construction work for facility, infrastructure, and environmental restoration projects.

Reverse auctions are generally a valuable tool to ensure the responsible stewardship of taxpayer dollars through the acquisition process.

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In a reverse auction, a buyer seeking a good or service—in this case the Federal Government—solicits bids. Multiple sellers offer bids and the seller with the lowest bid wins the competition.

However, in the specific instance of complex, specialized, or substantial design and construction services, the use of reverse auctions can be problematic. While the lowest price is often the goal for standardized goods and services, it is not the only factor that should be considered for these unique projects.

Quality is also an important evaluation factor, especially for complex services, like design-build contracts for major public buildings or works.

This bill would not prevent contracting officers from considering price in evaluating proposals for complex construction services, just the use of reverse auctions designed to achieve the lowest price without regard to quality.

Mr. Speaker, I urge Members to support this bill, and I reserve the balance of my time.

Mr. PALMER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 26, the Construction Consensus Procurement Improvement Act of 2021. This bill would prohibit the Federal Government's use of reverse auctions for complex design and construction services. A reverse auction is one where the sellers bid down the price instead of the buyers driving up the price. Most often, the contractor with

the lowest bid wins the contract. While we all wish for the Federal Government to get the lowest price, it is important that these complex projects are done properly, on time, and on budget.

Reverse auctions are not always appropriate for the types of services this bill deals with because design-build or complex construction projects often have variables which cannot be contemplated during the original bidding process.

The use of reverse auctions can often result in products that are subpar and, ultimately, over budget. Often, the winning low bid is nowhere near the final cost to the government after unanticipated factors lead to time and budget overruns.

Specifically, the Office of Federal Procurement Policy found that, for complex design and construction contracts, the expertise required to complete these projects was not built in to reverse auction bids.

Construction projects have a high degree of variability and the reverse auction process often does not yield the low costs intended for the taxpayer. This legislation is tailored to ensure that products and services which do not benefit from the reverse auction process will not be affected.

Going forward, we must continue to fight for the best possible products at the best price to the taxpayer. That includes ensuring benefits are brought to our constituents on time and on budget. This legislation will help to achieve that.

Mr. Speaker, I thank my colleague, Representative RO KHANNA, for his work and support on this legislation. I urge my colleagues to support the bill, and I reserve the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I reserve the balance of my time.

Mr. PALMER. Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky (Mr. COMER).

Mr. COMER. Mr. Speaker, I rise in strong support of my bill, H.R. 26, the Construction Consensus Procurement Improvement Act of 2021.

It is vitally important that the Federal Government procure complex design and construction services that remain on time and on budget. This bill would prevent the Federal reverse auctions procurement process from being used for complex projects. Using reverse auctions for major construction projects only causes problems, such as delays and wasteful spending.

Who pays the price?

The taxpayer.

The Federal Government must be good stewards of taxpayer dollars and get the best possible services for the best price. As ranking member of the Committee on Oversight and Reform, I want to continue to deliver savings to the taxpayer and make stakeholder interaction with the government much easier, and H.R. 26 does just that.

This bill is the result of strong bipartisan, bicameral negotiations and the

hard work of many private sector groups. I thank Senator PORTMAN for his hard work on this legislation last Congress. I am also thankful for the support of my Committee on Oversight and Reform colleague, Mr. KHANNA.

Mr. Speaker, I would also like to particularly thank the Construction Industry Procurement Coalition, the Association of General Contractors, the Design-Build Institute of America, the American Subcontractors Association, and numerous others for their hard work on this legislation.

I look forward to continuing to work with the majority to advance common-sense legislation to make government more efficient and effective. I encourage the Senate to quickly consider this bill and send it to the President's desk.

Mr. Speaker, I urge my House colleagues to support H.R. 26.

Mr. PALMER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a sensible and needed bipartisan reform. I am hopeful to see similar bipartisan procurement reform bills this Congress, and I urge my colleagues to support this legislation.

Mr. Speaker, I yield back the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I urge passage of H.R. 26, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) that the House suspend the rules and pass the bill, H.R. 26.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SETTLEMENT AGREEMENT INFORMATION DATABASE ACT OF 2021

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 27) to amend chapter 3 of title 5, United States Code, to require the publication of settlement agreements, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 27

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Settlement Agreement Information Database Act of 2021".

SEC. 2. INFORMATION REGARDING SETTLEMENT AGREEMENTS ENTERED INTO BY FEDERAL AGENCIES.

(a) REQUIREMENTS FOR SETTLEMENT AGREEMENTS.—Chapter 3 of title 5, United States Code, is amended by adding at the end the following new section:

"§ 307. Information regarding settlement agreements

"(a) DEFINITIONS.—In this section:

“(1) LOCAL GOVERNMENT.—The term ‘local government’ has the meaning given that term in section 6501 of title 31.

“(2) ORDER TYPE.—The term ‘order type’ means the type of action or instrument used to settle a civil or criminal judicial action.

“(3) SETTLEMENT AGREEMENT.—The term ‘settlement agreement’ means a settlement agreement (including a consent decree) that—

“(A) is entered into by an Executive agency; and

“(B) relates to an alleged violation of Federal civil or criminal law.

“(4) STATE.—The term ‘State’ means each of the several States, the District of Columbia, each territory or possession of the United States, and each federally recognized Indian Tribe.

“(b) SETTLEMENT AGREEMENT INFORMATION DATABASE.—

“(1) EXECUTIVE AGENCY REQUIREMENT.—

“(A) IN GENERAL.—Subject to subparagraph (B), the head of each Executive agency shall, in accordance with guidance issued pursuant to paragraph (2), submit the following information to the database established under paragraph (3):

“(i) A list of each settlement agreement, in a categorized and searchable format, entered into by the Executive agency, as a party to a lawsuit, which shall include, for each settlement agreement—

“(I) the order type of the settlement agreement;

“(II) the date on which the parties entered into the settlement agreement;

“(III) a list of specific violations that specify the basis for the action taken, with a description of the claims each party settled under the settlement agreement;

“(IV) the amount of attorneys’ fees and other litigation costs awarded, if any, including a description of the statutory basis for such an award;

“(V) the amount each party settling a claim under the settlement agreement is obligated to pay under the settlement agreement;

“(VI) the total amount the settling parties are obligated to pay under the settlement agreement;

“(VII) the amount, if any, the settling party is obligated to pay that is expressly specified under the settlement agreement as a civil or criminal penalty or fine;

“(VIII) any payment made under the settlement agreement, including a description of any payment made to the Federal Government;

“(IX) the projected duration of the settlement agreement, if available;

“(X) a list of State or local governments that may be directly affected by the terms of the settlement agreement;

“(XI) a brief description of any economic data and methodology used to justify the terms of the settlement agreement;

“(XII) any modifications to the settlement agreement, when applicable;

“(XIII) notice and comments, when applicable; and

“(XIV) whether the settlement agreement is still under judicial enforcement and any period of time by which the parties agreed to have certain conditions met.

“(ii) A copy of each—

“(I) settlement agreement entered into by the Executive agency; and

“(II) statement issued under paragraph (4).

“(B) NONDISCLOSURE.—The requirement to submit information or a copy of a settlement agreement under subparagraph (A) shall not apply to the extent the information or copy (or portion thereof)—

“(i) is subject to a confidentiality provision that prohibits disclosure of the information or copy (or portion thereof); and

“(ii) would not be disclosed under section 552, if the Executive agency provides a citation to the applicable exemption.

“(C) CLARIFICATION OF RESPONSIBLE AGENCY.—In a case in which an Executive agency is acting at the request or on behalf of another Executive agency (referred to as the originating agency), the originating agency is responsible for submitting information under subparagraph (A).

“(2) GUIDANCE.—The Director of the Office of Management and Budget shall issue guidance for Executive agencies to implement paragraph (1). Such guidance shall include the following:

“(A) Specific dates by which submissions must be made, not less than twice a year.

“(B) Data standards, including common data elements and a common, nonproprietary, searchable, machine-readable, platform independent format.

“(C) A requirement that the information and documents required under paragraph (1) are publicly available for a period starting on the date of the settlement through not less than 5 years after the termination of the settlement agreement.

“(3) ESTABLISHMENT OF DATABASE.—The Director of the Office of Management and Budget, or the head of an Executive agency designated by the Director, shall establish and maintain a public, searchable, downloadable database for Executive agencies to directly upload and submit the information and documents required under paragraph (1) for immediate publication online.

“(4) STATEMENT OF CONFIDENTIALITY.—If the head of an Executive agency determines that a confidentiality provision in a settlement agreement, or the sealing of a settlement agreement, is required to protect the public interest of the United States, the head of the Executive agency may except the settlement agreement from the requirement in paragraph (1) and shall issue a written public statement stating why such action is required to protect the public interest of the United States, which shall explain—

“(A) what interests confidentiality protects; and

“(B) why the interests protected by confidentiality outweigh the public’s interest in knowing about the conduct of the Federal Government and the expenditure of Federal resources.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 3 of title 5, United States Code, is amended by adding at the end the following new item:

“307. Information regarding settlement agreements.”.

(c) DEADLINE TO ESTABLISH DATABASE.—Not later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget shall issue guidance required by section 307(b)(2) of title 5, United States Code, as added by subsection (a), and establish the settlement agreement information database required by section 307(b)(3) of title 5, United States Code, as added by subsection (a).

(d) DEADLINE FOR FIRST SUBMISSION.—Not later than 90 days after the Director issues guidance under section 307(b)(2) of title 5, United States Code, as added by subsection (a), the head of each Executive agency (as defined in section 105 of title 5, United States Code) shall begin submitting information to the database established under such section 307.

SEC. 3. AMENDMENTS TO THE FREEDOM OF INFORMATION ACT.

Section 552(a)(2) of title 5, United States Code, is amended—

(1) by redesignating subparagraphs (B) through (E) as subparagraphs (C) through (F), respectively; and

(2) by inserting after subparagraph (A) the following new subparagraph:

“(B) each settlement agreement (as defined in section 307) entered into by an Executive agency, with redactions for information that the agency may withhold under paragraph (8) and subsections (b) and (c) of this section;”.

SEC. 4. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, shall be construed to require the disclosure of information or records that any agency may properly withhold from public disclosure under section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”).

SEC. 5. EFFECTIVE DATE; APPLICABILITY.

This Act shall be effective 180 days after the date of the enactment of this Act and shall apply—

(1) with respect to any settlement agreement (as such term is defined in section 307 of title 5, United States Code, as added by section 2), entered into on or after the date of the enactment of this Act; and

(2) to the extent practicable, any such settlement agreement (as such term is defined in section 307 of title 5, United States Code, as added by section 2) that remains in effect on or after the date of the enactment of this Act.

SEC. 6. DETERMINATION OF BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) and the gentleman from Alabama (Mr. PALMER) each will control 20 minutes.

The Chair recognizes the gentlewoman from New York.

GENERAL LEAVE

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and include extraneous material on the measure before us.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I support this common-sense measure, and I thank Representatives PALMER and COOPER for their hard work on it.

The Settlement Agreement Information Database Act would create a database of settlement agreements entered into by Federal agencies that relate to alleged violations of Federal, civil, or criminal law. The Office of Management and Budget would manage this database and set deadlines for submission.

The heads of executive agencies would be required to submit details about the types of settlement agreements, the parties involved in the settlements, specific violations, and the

dates on which the settlement agreements were agreed to.

The information about the settlement agreements would remain public until 5 years after the termination of the agreements. The information in the agreements would remain subject to the Freedom of Information Act; but if the head of the agency decided to keep an entire agreement confidential, he or she would be required to provide an explanation of that action.

This bill would improve the transparency surrounding settlement agreements, which in the past have been difficult for the public to access.

Mr. Speaker, I reserve the balance of my time.

Mr. PALMER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 27, the Settlement Agreement Information Database Act. Transparency and public participation are vital to ensure the public's continued trust in our government. Increasingly, Federal agencies are using legally binding settlement agreements to resolve litigation without going through lengthy public trials.

However, it is impossible for Congress and the public to determine the comprehensive impact of these settlement agreements on the State and local governments and private sector entities, which must continue to follow the mandated requirements. Such secret negotiations and agreements essentially prevent the public from participating in important policy decisions.

The burden of Federal settlement agreements can be difficult to see and understand, but State and local governments, industry stakeholders, and taxpayers can be directly affected by the settlements for years, and yet they are unable to provide input. This legislation seeks to correct that problem.

The Settlement Agreement Information Database Act, or SAID Act, requires Federal agencies to submit information regarding consent decrees and settlement agreements to a public electronic database. This public resource, to be overseen by the Office of Management and Budget, would include dates, payments, attorney fees awards, and a list of State and local governments and entities impacted by the settlement.

Currently, agencies release information about settlements at their discretion and will only publicize the facts that reflect favorably upon the agency. Furthermore, the terms of settlement agreements are often deemed confidential.

Under the requirements of the SAID Act, if the agency believes that the information regarding an agreement should remain confidential, the agency head must publish an explanation of why it is confidential. This will increase the transparency of the Federal Government and shine a much-needed light on settlement agreements.

Mr. Speaker, I thank my colleagues, Representatives JIM COOPER, GERRY

CONNOLLY, and VAN TAYLOR, for supporting this important legislation. I am happy we could expedite its consideration again in the House after passing this bill unanimously in the 116th Congress. I thank the chairman for bringing this bill and making it part of this first legislative day package.

Mr. Speaker, I urge my colleagues on both sides of the aisle to support this commonsense legislation, and I reserve the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, if the gentleman has no further speakers, I am prepared to close, and I reserve the balance of my time.

Mr. PALMER. Mr. Speaker, I hope we can continue to find bipartisan ways to increase transparency of the Federal Government. I strongly urge my colleagues to support this commonsense legislation, and I yield back the balance of my time.

Mrs. CAROLYN B. MALONEY of New York. Mr. Speaker, I urge passage of H.R. 27. I am strongly in support of this bipartisan legislation, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) that the House suspend the rules and pass the bill, H.R. 27.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

CONGRESSIONAL BUDGET JUSTIFICATION TRANSPARENCY ACT OF 2021

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 22) to amend the Federal Funding Accountability and Transparency Act of 2006, to require the budget justifications and appropriation requests of agencies be made publicly available, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from New York (Mrs. CAROLYN B. MALONEY) that the House suspend the rules and pass the bill.

The vote was taken by electronic device, and there were—yeas 412, nays 2, not voting 16, as follows:

[Roll No. 9]

YEAS—412

Adams
Aderholt
Aguilar
Allen
Allred
Amodei
Armstrong
Arrington
Auchincloss
Axne
Babin

Bacon
Baird
Balderson
Banks
Barr
Barragán
Bass
Bentz
Bera
Bergman
Beyer

Bice (OK)
Biggs
Bilirakis
Bishop (GA)
Bishop (NC)
Blumenauer
Blunt Rochester
Boebert
Bonamici
Bost
Bourdeaux

Bowman
Boyle, Brendan
F.
Brooks
Brown
Buchanan
Buck
Bucshon
Budd
Burchett
Burgess
Bush
Bustos
Butterfield
Calvert
Cammack
Carbajal
Cárdenas
Carl
Carson
Carter (GA)
Carter (TX)
Cartwright
Case
Casten
Castor (FL)
Castro (TX)
Cawthorn
Chabot
Cheney
Chu
Cicilline
Clarke (NY)
Cleaver
Cline
Cloud
Clyburn
Clyde
Cohen
Cole
Comer
Connolly
Cooper
Correa
Costa
Courtney
Craig
Crawford
Crenshaw
Crist
Crow
Cuellar
Curtis
Davids (KS)
Davis, Danny K.
Davis, Rodney
Dean
DeFazio
DeGette
DeLauro
DelBene
Delgado
Demings
DesJarlais
Deutch
Diaz-Balart
Dingell
Doggett
Donalds
Doyle, Michael
F.
Duncan
Dunn
Emmer
Escobar
Eshoo
Espallat
Estes
Evans
Fallon
Feenstra
Ferguson
Fischbach
Fitzgerald
Fitzpatrick
Fleischmann
Fletcher
Fortenberry
Foster
Fox
Frankel, Lois
Franklin, C.
Scott
Fudge
Fulcher
Gaetz
Gallagher
Gallego
Garamendi

Garbarino
Garcia (CA)
Garcia (IL)
Garcia (TX)
Gibbs
Gimenez
Gohmert
Golden
Gomez
Gonzales, Tony
Gonzalez (OH)
Gonzalez
Vicente
Good (VA)
Gooden (TX)
Gosar
Gottheimer
Graves (LA)
Graves (MO)
Green (TN)
Green, Al (TX)
Greene (GA)
Griffith
Grijalva
Grothman
Guest
Guthrie
Haaland
Hagedorn
Harder (CA)
Harris
Harshbarger
Hartzler
Hayes
Hern
Herrell
Herrera Beutler
Hice (GA)
Higgins (LA)
Higgins (NY)
Hill
Himes
Hinson
Hollingsworth
Horsford
Houlahan
Hoyer
Hudson
Huffman
Huizenga
Issa
Jackson
Jackson Lee
Jacobs (CA)
Jacobs (NY)
Jayapal
Jeffries
Johnson (GA)
Johnson (LA)
Johnson (OH)
Johnson (SD)
Johnson (TX)
Jones
Jordan
Joyce (OH)
Joyce (PA)
Kahale
Kaptur
Katko
Keating
Keller
Kelly (IL)
Kelly (MS)
Kelly (PA)
Khanna
Kildee
Kilmer
Kim (CA)
Kim (NJ)
Kind
Kinzinger
Kirkpatrick
Krishnamoorthi
Kuster
Kustoff
LaHood
LaMalfa
Lamb
Lamborn
Langevin
Larsen (WA)
Latta
LaTurner
Lawrence
Lawson (FL)
Lee (CA)
Lee (NV)
Leger Fernandez
Lesko

Levin (CA)
Levin (MI)
Lieu
Lofgren
Long
Loudermilk
Lucas
Luetkemeyer
Luria
Lynch
Mace
Malinowski
Malliotakis
Maloney
Carolyn B.
Maloney, Sean
Mann
Manning
Massie
Mast
Matsui
McBath
McCarthy
McCauley
McClain
McClintock
McCollum
McGovern
McHenry
McKinley
McNerney
Meeks
Meijer
Meng
Meuser
Mfume
Miller (IL)
Miller (WV)
Miller-Meeks
Moolenaar
Mooney
Moore (AL)
Moore (UT)
Moore (WI)
Morelle
Moulton
Mrvan
Mullin
Murphy (FL)
Murphy (NC)
Neal
Neguse
Nehls
Newhouse
Newman
Norcross
Norman
Nunes
O'Halleran
Oberholte
Ocasio-Cortez
Omar
Owens
Palazzo
Pallone
Palmer
Panetta
Pappas
Pascarelli
Payne
Pence
Perlmutter
Perry
Peters
Pfluger
Phillips
Pingree
Pocan
Porter
Pressley
Price (NC)
Quigley
Reed
Reschenthaler
Rice (NY)
Rice (SC)
Rice (WA)
Rogers (AL)
Rogers (KY)
Rose
Rosendale
Ross
Rouzer
Roy
Roybal-Allard
Ruiz
Ruppersberger
Rush
Rutherford